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5 Attorneys for Defendants  
KEVIN VU and CAFE BONITA, INC.  
6  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 SINHDARELLA, INC.

No. C 07 04353 WHA

12 vs.

ANSWER OF DEFENDANT  
CAFE BONITA, INC.

13 KEVIN VU, etc., et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 Defendant CAFE BONITA, INC., a California corporation ("Defendant")  
17 hereby responds to the First Amended Complaint of Plaintiff SINHDARELLA, INC.  
18 ("Sinhdarella" or "Plaintiff") as follows:

19 Except as hereinafter expressly admitted, qualified or otherwise  
20 admitted, Defendant specifically denies each and every allegation, statement,  
21 matter and thing contained in the First Amended Complaint.

22 **Jurisdiction**

23 1. In response to this paragraph of the First Amended Complaint,  
24 Defendant is without sufficient knowledge or information to form a belief as to the  
25 truth of the allegations in this paragraph, and on that basis denies each and every  
26 allegation in this paragraph.

27 **Venue**

28 2. In response to this paragraph of the First Amended Complaint,

1 Defendant admits that it does business within this district, but denies the remaining  
2 allegations in this paragraph.

### 3 **Intradistrict Assignment**

4 3. In response to this paragraph of the First Amended Complaint,  
5 Defendant admits each and every allegation in this paragraph.

### 6 **Parties**

7 4. In response to this paragraph of the First Amended Complaint,  
8 Defendant is without sufficient knowledge or information to form a belief as to the  
9 truth of the allegations in this paragraph, and on that basis denies each and every  
10 allegation in this paragraph.

11 5. In response to this paragraph of the First Amended Complaint,  
12 Defendant admits that defendant KEVIN VU is an individual who resides in San  
13 Jose. Defendant denies the remaining allegations in this paragraph.

14 6. In response to this paragraph of the First Amended Complaint,  
15 Defendant admits each and every allegation in this paragraph.

16 7. In response to this paragraph of the First Amended Complaint,  
17 Defendant admits that its counsel informed Plaintiff that Defendant is and has at all  
18 times been the owner and operator of the restaurant known as the "BOILING  
19 CRAB" located at 393 North Capitol Avenue, San Jose, California (the "San Jose  
20 "Boiling Crab" Restaurant"). Defendant denies the remaining allegations in this  
21 paragraph.

22 8. In response to this paragraph of the First Amended Complaint,  
23 Defendant denies each and every allegation in this paragraph.

24 9 . In response to this paragraph of the First Amended Complaint,  
25 Defendant admits that in June 2006 it opened the San Jose "Boiling Crab"  
26 Restaurant. Defendant denies the remaining allegations in this paragraph.

27 10. In response to this paragraph of the First Amended Complaint,  
28 Defendant is without sufficient knowledge or information to form a belief as to the

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1 truth of the allegations in this paragraph, and on that basis denies each and every  
2 allegation in this paragraph.

3 11. In response to this paragraph of the First Amended Complaint,  
4 Defendant is without sufficient knowledge or information to form a belief as to the  
5 truth of the allegations in this paragraph, and on that basis denies each and every  
6 allegation in this paragraph.

7 **Factual Allegations**

8 12. In response to this paragraph of the First Amended Complaint,  
9 Defendant is without sufficient knowledge or information to form a belief as to the  
10 truth of the allegations in this paragraph, and on that basis denies each and every  
11 allegation in this paragraph.

12 13. In response to this paragraph of the First Amended Complaint,  
13 Defendant is without sufficient knowledge or information to form a belief as to the  
14 truth of the allegations in this paragraph, and on that basis denies each and every  
15 allegation in this paragraph.

16 14. In response to this paragraph of the First Amended Complaint,  
17 Defendant is without sufficient knowledge or information to form a belief as to the  
18 truth of the allegations in this paragraph, and on that basis denies each and every  
19 allegation in this paragraph.

20 15. In response to this paragraph of the First Amended Complaint,  
21 Defendant is without sufficient knowledge or information to form a belief as to the  
22 truth of the allegations in this paragraph, and on that basis denies each and every  
23 allegation in this paragraph.

24 16. In response to this paragraph of the First Amended Complaint,  
25 Defendant is without sufficient knowledge or information to form a belief as to the  
26 truth of the allegations in this paragraph, and on that basis denies each and every  
27 allegation in this paragraph.

28 17. In response to this paragraph of the First Amended Complaint,

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1 Defendant is without sufficient knowledge or information to form a belief as to the  
2 truth of the allegations in this paragraph, and on that basis denies each and every  
3 allegation in this paragraph.

4 18. In response to this paragraph of the First Amended Complaint,  
5 Defendant is without sufficient knowledge or information to form a belief as to the  
6 truth of the allegations in this paragraph, and on that basis denies each and every  
7 allegation in this paragraph.

8 19. In response to this paragraph of the First Amended Complaint,  
9 Defendant is without sufficient knowledge or information to form a belief as to the  
10 truth of the allegations in this paragraph, and on that basis denies each and every  
11 allegation in this paragraph.

#### 12 **Allegations of Federal Registration**

13 20. In response to this paragraph of the First Amended Complaint,  
14 Defendant is without sufficient knowledge or information to form a belief as to the  
15 truth of the allegations in this paragraph, and on that basis denies each and every  
16 allegation in this paragraph.

17 21. In response to this paragraph of the First Amended Complaint,  
18 Defendant is without sufficient knowledge or information to form a belief as to the  
19 truth of the allegations in this paragraph, and on that basis denies each and every  
20 allegation in this paragraph.

#### 21 **Infringement Allegations**

22 22. In response to this paragraph of the First Amended Complaint,  
23 Defendant denies each and every allegation in this paragraph.

24 23. In response to this paragraph of the First Amended Complaint,  
25 Defendant denies each and every allegation in this paragraph.

26 24. In response to this paragraph of the First Amended Complaint,  
27 Defendant denies each and every allegation in this paragraph.

28 25. In response to this paragraph of the First Amended Complaint,

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1 Defendant denies each and every allegation in this paragraph.

2 26. In response to this paragraph of the First Amended Complaint,  
3 Defendant denies each and every allegation in this paragraph.

4 27. In response to this paragraph of the First Amended Complaint,  
5 Defendant denies each and every allegation in this paragraph.

6 **Allegations Regarding Demands to Stop**

7 28. In response to this paragraph of the First Amended Complaint,  
8 Defendant is without sufficient knowledge or information to form a belief as to the  
9 truth of the allegations in this paragraph, and on that basis denies each and every  
10 allegation in this paragraph.

11 29. In response to this paragraph of the First Amended Complaint,  
12 Defendant is without sufficient knowledge or information to form a belief as to the  
13 truth of the allegations in this paragraph, and on that basis denies each and every  
14 allegation in this paragraph.

15 30. In response to this paragraph of the First Amended Complaint,  
16 Defendant is without sufficient knowledge or information to form a belief as to the  
17 truth of the allegations in this paragraph, and on that basis denies each and every  
18 allegation in this paragraph.

19 31. In response to this paragraph of the First Amended Complaint,  
20 Defendant is without sufficient knowledge or information to form a belief as to the  
21 truth of the allegations in this paragraph, and on that basis denies each and every  
22 allegation in this paragraph.

23 **First Claim for Relief**

24 32. In response to this paragraph of the First Amended Complaint,  
25 Defendant incorporates by reference its responses to the allegations of  
26 paragraphs 1 through 31, inclusive of the First Amended Complaint.

27 33. In response to this paragraph of the First Amended Complaint,  
28 Defendant is without sufficient knowledge or information to form a belief as to the

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1 truth of the allegations in this paragraph, and on that basis denies each and every  
2 allegation in this paragraph.

3 34. In response to this paragraph of the First Amended Complaint,  
4 Defendant denies each and every allegation in this paragraph.

5 35. In response to this paragraph of the First Amended Complaint,  
6 Defendant is without sufficient knowledge or information to form a belief as to the  
7 truth of whether Sinhdarella consented to or authorized Defendant's adoption or  
8 commercial use of the trademark and on that basis denies this allegation.  
9 Defendant denies the remaining allegations in this paragraph.

10 36. In response to this paragraph of the First Amended Complaint,  
11 Defendant denies each and every allegation in this paragraph.

12 37. In response to this paragraph of the First Amended Complaint,  
13 Defendant denies each and every allegation in this paragraph.

14 38. In response to this paragraph of the First Amended Complaint,  
15 Defendant denies each and every allegation in this paragraph.

16 39. In response to this paragraph of the First Amended Complaint,  
17 Defendant denies each and every allegation in this paragraph.

18 40. In response to this paragraph of the First Amended Complaint,  
19 Defendant denies each and every allegation in this paragraph.

20 41. In response to this paragraph of the First Amended Complaint,  
21 Defendant denies each and every allegation in this paragraph.

22 **Second Claim for Relief**

23 42. In response to this paragraph of the First Amended Complaint,  
24 Defendant incorporates by reference its responses to the allegations of  
25 paragraphs 1 through 41, inclusive of the First Amended Complaint.

26 43. In response to this paragraph of the First Amended Complaint,  
27 Defendant is without sufficient knowledge or information to form a belief as to the  
28 truth of the allegations in this paragraph, and on that basis denies each and every

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1 allegation in this paragraph.

2 44. In response to this paragraph of the First Amended Complaint,  
3 Defendant is without sufficient knowledge or information to form a belief as to the  
4 truth of the allegations in this paragraph, and on that basis denies each and every  
5 allegation in this paragraph.

6 45. In response to this paragraph of the First Amended Complaint,  
7 Defendant denies each and every allegation in this paragraph.

8 46. In response to this paragraph of the First Amended Complaint,  
9 Defendant denies each and every allegation in this paragraph.

10 47. In response to this paragraph of the First Amended Complaint,  
11 Defendant denies each and every allegation in this paragraph.

12 48. In response to this paragraph of the First Amended Complaint,  
13 Defendant denies each and every allegation in this paragraph.

14 49. In response to this paragraph of the First Amended Complaint,  
15 Defendant denies each and every allegation in this paragraph.

16 50. In response to this paragraph of the First Amended Complaint,  
17 Defendant denies each and every allegation in this paragraph.

18 **Third Claim for Relief**

19 51. In response to this paragraph of the First Amended Complaint,  
20 Defendant incorporates by reference its responses to the allegations of  
21 paragraphs 1 through 50, inclusive of the First Amended Complaint.

22 52. In response to this paragraph of the First Amended Complaint,  
23 Defendant denies each and every allegation in this paragraph.

24 53. In response to this paragraph of the First Amended Complaint,  
25 Defendant denies each and every allegation in this paragraph.

26 54. In response to this paragraph of the First Amended Complaint,  
27 Defendant denies each and every allegation in this paragraph.

28 / / / /

**Fourth Claim for Relief**

55. In response to this paragraph of the First Amended Complaint, Defendant incorporates by reference its responses to the allegations of paragraphs 1 through 54, inclusive of the First Amended Complaint.

56. In response to this paragraph of the First Amended Complaint, Defendant denies each and every allegation in this paragraph.

57. In response to this paragraph of the First Amended Complaint, Defendant denies each and every allegation in this paragraph.

**Fifth Claim for Relief**

58. In response to this paragraph of the First Amended Complaint, Defendant incorporates by reference its responses to the allegations of paragraphs 1 through 57, inclusive of the First Amended Complaint.

59. In response to this paragraph of the First Amended Complaint, Defendant denies each and every allegation in this paragraph.

60. In response to this paragraph of the First Amended Complaint, Defendant denies each and every allegation in this paragraph.

61. In response to this paragraph of the First Amended Complaint, Defendant denies each and every allegation in this paragraph.

**AFFIRMATIVE DEFENSES**

Defendant asserts the following affirmative defenses based on its current knowledge and information and in order to avoid waiver. Defendant reserves the right to withdraw any of these affirmative defenses to assert further affirmative defenses as information becomes available.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's First Amended Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims for infringement are barred because the registration is

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1 invalid and unenforceable.

2 **THIRD AFFIRMATIVE DEFENSE**

3 Plaintiff's alleged mark is merely descriptive of the goods and not  
4 entitled to trademark protection.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 All or part of plaintiff's claims fail to state a cause of action because the  
7 purported marks have not acquired distinctiveness (secondary meaning) and/or  
8 are not inherently distinctive.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claim for trademark infringement and Lanham Act violations  
11 are barred because the allegedly infringing words were not used as a trademark,  
12 but fairly and in good faith to describe a product, and Plaintiff is not entitled to  
13 appropriate a generic or descriptive term for its exclusive use.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred because Plaintiff cannot demonstrate any  
16 likelihood that the public will be confused or misled as to the source of Defendant's  
17 goods or that Defendant's goods are produced by, or endorsed by, Plaintiff.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 Plaintiff, through its failure to protect or enforce their trademark rights,  
20 has abandoned all such rights.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred by the doctrine of fair use.

23 **NINTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims are barred because the purported trade dress does  
25 not qualify for protection.

26 **TENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are barred because any alleged infringement was  
28 innocent and wholly without knowledge by Defendant of any rights claimed by

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1 Plaintiff.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 Any and all of the acts alleged by Plaintiff were performed, if they were  
4 performed at all, with lack of knowledge, lack of willful intent and without malice or ill-  
5 will.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 Defendant alleges that Plaintiff's claims are barred because Plaintiff  
8 has not suffered any damages as a result of the facts alleged in the First Amended  
9 Complaint.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 Defendant alleges it did not infringe any trademark and Defendant's  
12 conduct, if any, was not intended to, was not used to, and did not, in fact, cause  
13 confusion, mistake, or deceit.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 Plaintiff's common law and state law claims are preempted by Federal  
16 law.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred by the applicable statutes of limitation.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred by the doctrine of laches.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred or its recovery must be reduced for failure  
23 to mitigate damages, if any.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred by the doctrine of estoppel.

26 **NINETEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are barred by the doctrine of acquiescence.

28 / / / /

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of waiver.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff takes nothing by reason of its First Amended Complaint;
2. That judgment be rendered in favor of Defendant;
3. That Defendant be awarded attorneys fees and costs incurred in defense of this action as provided by any and all applicable laws and statutes; and
4. For such other relief as the Court deems just and proper.

DEFENDANT DEMANDS TRIAL BY JURY ON ALL ISSUES.

Dated: 5 February 2008.

Respectfully Submitted  
Law Offices of Christopher Hays

By 

Christopher Hays  
Attorneys for Defendant CAFE BONITA, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed by Law Offices Of Christopher Hays in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Embarcadero Center, Suite 500, San Francisco, California 94111.

On 5 February 2008 I served the foregoing document(s) described as ANSWER OF DEFENDANT CAFE BONITA, INC. on the interested parties in this action as stated on the attached service list as follows:

- X By placing true copies thereof enclosed in sealed envelope(s) addressed as stated on the attached service list
- ☐ BY PERSONAL SERVICE  
I delivered such envelope(s) by hand to the offices of the addressee(s).
- X BY MAIL  
I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice such envelope(s) would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ BY OVERNIGHT MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing via \_\_\_\_\_. Under that practice such envelope(s) would be deposited at an authorized \_\_\_\_\_ location on that same day with delivery fees fully provided for at San Francisco, California, in the ordinary course of business.
- X BY E-MAIL:  
On 5 February 2008, at approximately 4:45 pm, I served the above stated document(s) by e-mail directed to the parties as indicated of the attached service list.

Executed on 5 February 2008 at San Francisco, California.

- X (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

  
\_\_\_\_\_  
Christopher Hays

ATTACHED SERVICE LIST

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